

Gail Bennett-Wofford  
 Dana Wofford  
 Mark Wofford  
 3344 & 3345 Lakeshore Blvd.  
 Lakeport, California 95453  
 (707) 275-2758 (v)  
 (707) 2752758 (f) Call first  
 email: [dgwofford@netzero.com](mailto:dgwofford@netzero.com)

Plaintiffs *in pro se*

**FILED**  
 2015 NOV -3 P 3:20  
 SUSAN Y. SOONG  
 CLERK, U.S. DISTRICT COURT  
 NO. DIST. OF CA.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

Gail Bennett-Wofford, Dana Wofford  
 and Mark Wofford, all individuals,

Plaintiffs

vs.

BAYVIEW LOAN SERVICING, LLC, a  
 Delaware limited liability company, and  
 DOES 1-20, inclusive,

Defendants.

} Case Number 15-cv-2445-CRB,  
 } Complaint Filed: June 2, 2015  
 } Plaintiff's Opposition to Defendant's  
 } Motion to Dismiss, Request for  
 } Leave to dismiss Counts 3 & 4,  
 } and Request for Leave to Amend  
 } Date: November 20, 2015  
 } Time: 10:00 a.m.  
 } CTRM: 6

PREFACE

Defendant Bayview has filed and served an overarching series of objections to the instant Complaint, some of which are meritorious and at least one of which is fraudulent. Plaintiffs have therefore chosen to address the 12(b)(6) motion non-sequentially in order that the Court may have an opportunity to view the issues from a convenient perspective.

I.

REQUEST FOR LEAVE TO DISMISS COUNTS THREE AND FOUR.

Defendant argues at 9, 15-10:18 that there is no private right of action with respect to Plaintiffs' claims of mail and wire fraud. Subsequent

1 investigation corroborates that position. It appears that the appropriate  
2 remedy is a formal complaint to the United States Postal Service, United  
3 States Postal Inspection Unit, whose mission it is to investigate allegations of  
4 mail fraud. It also develops that it is the responsibility of the Federal Trade  
5 Commission to investigate matters concerning wire fraud. We stand  
6 corrected.

7 Plaintiffs apologize to the Court and to counsel for the error and seek  
8 leave to dismiss these two counts, forthwith.

9 II.

10 COUNSEL'S CLAIM THAT BAYVIEW IS NOT A DEBT COLLECTOR IS  
11 SPURIOUS.

12 Bayview's motion consumes the better part of four pages (10, 19-13:15)  
13 all the while proclaiming that the corporation is NOT a debt collector.  
14 Opinions vary but perhaps Exhibit 1 will lay that issue to rest.

15 III.

16 CONTRACTUAL BREACHES.

17 A. TWO CONTRACTS, ONE CLAIM.

18 "It is well settled that a demurrer (the state court's  
19 functional equivalent of a "motion to dismiss") is  
20 proper when allegations of multiple contracts within a  
21 single cause of action cause uncertainty. See  
22 *Leader v. Health Industries America, Inc.*, 89  
23 Cal.App.603, at 608 (2001)." Motion to Dismiss, 5,  
24 14-18.

25 But upon investigation it appears that counsel's reliance on *Leader* is  
26 inapposite at best, and misleading at worst:

27 "Following remand, plaintiffs filed a third amended  
28 complaint. Again defendants successfully demurred.



1 The trial court sustained defendants' special demurrer  
2 for uncertainty to the first cause of action (breach of  
3 contract), finding the allegations of multiple contracts  
4 within a single cause of action rendered the pleading  
5 uncertain **as to the identity of the parties to and the**  
6 **operative terms of the various agreements, and as**  
7 **to whether those agreements were written, verbal**  
8 **or implied in fact or law. fn. 4. Emphasis added.**

9 In the instant case, it is clear that the contracts were verbal as opposed  
10 to oral, attached in their entirety to the Complaint and that the parties were  
11 clearly named and known to each other. We note parenthetically that Mr.  
12 Edward Schloss' signature appears on both contracts.

13 So where is the uncertainty to be found? The motion insists that the  
14 inclusion of two contracts and references to both within a single claim renders  
15 him unable to make heads or tails of what it is the Complaint alleges.  
16 Plaintiffs respectfully disagree.

17 The reasons for the manner in which the facts were pled was set forth  
18 in the Complaint at page 3, 6-19, with the second paragraph making the point:

19 "Stated differently, the allegations set forth in Case  
20 No. CV 09 6016 JCS (Exhibit 1) and its subsequent  
21 settlement agreement (Exhibit 2; CV 12 4167 NJV  
22 (Exhibit 3), and its subsequent settlement agreement  
23 (Exhibit 4) are precisely the acts complained of in this  
24 third litigation. As hard as it may be to believe,  
25 Bayview has twice before done wrong, paid the  
26 Plaintiffs' attorney fees, and agreed to cease and  
27 desist without, of course, actually admitting  
28 responsibility. So egregiously arrogant was this

1 corporation that they actually threatened foreclosure  
2 while in the midst of negotiating a settlement  
3 agreement in 2013

4 And yet, here we are again..."

5 So Plaintiffs insist that Bayview is a serial breacher who seems unable  
6 or unwilling to abide by the terms of a contract which calls for nothing more  
7 complex than fair dealing. If the Court determines that the method of  
8 expression has created uncertainty, Plaintiffs will gladly make any needed  
9 corrections or improvements. But at this juncture, it seems that Bayview's  
10 problem is not an inability to understand the Complaint...just the opposite.

11 B. PERFORMANCE.

12 "Irrespective of specifically which contracts Plaintiffs  
13 claim was (sic) breached by Bayview, (which is  
14 certainly "uncertain" by the four corners of the  
15 Complaint) what is certain is that Plaintiffs have failed  
16 to allege their performance or excuse for non-  
17 performance." Motion, 6, 1-6.

18 Since the terms of both contracts impose duties upon Bayview but not  
19 the Plaintiffs, it is difficult to understand what counsel means to suggest.  
20 Performance obligations rested with Bayview alone.

21 C. DATES OF BREACHES.

22 By limiting its attention to paragraphs 32-39, Bayview conveniently  
23 overlooks the fact that the answers to those questions may be found in the  
24 foregoing paragraphs, each numbered and incorporated by reference.

25 D. TO BREACH OR NOT TO BREACH.

26 Plaintiffs freely acknowledge that as *pro se* litigants, their knowledge  
27 and legal acumen pales as compared with counsel's. However, respectfully,  
28 it seems that Bayview has chosen to turn a blind eye and a deaf ear to

1 allegations which seem to them to have been drawn with specificity, clarity  
2 and accuracy. Should the Court disagree, adjustments will be made.

3 IV. FRAUD.

4 Defendant Bayview has made it abundantly clear that it finds the  
5 Complaint to be entirely lacking in merit and deserving of only a good swift  
6 kick into the middle of Union Square. Perhaps. But Bayview's  
7 representations to the Court (see Exhibit 1 and the citation to the *Leader*  
8 *case*) *give the Plaintiffs pause to question the sincerity* of its positions.

9 The settlement contracts attached as Exhibits to the Complaint speak  
10 for themselves. Bayview settled because Bayview had done wrong. In each  
11 of the cases, the Defendant continued to misbehave even after having signed  
12 the agreements pledging to stop.

13 Litigation ceased, money changed hands and the Plaintiffs continued  
14 to pay the note. That was detrimental reliance as Bayview clearly had no  
15 intention of mending its ways and indeed, seems to be walking that same path  
16 even now.

17 V. LEAVE TO AMEND.

18 Plaintiffs respectfully request that the Court grant leave to amend, in the  
19 event that it agrees with any of Bayview's objections.

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2 VI. CONCLUSION.

3 As the Complaint makes clear, this Defendant has demonstrated a clear  
4 pattern and practice of skulduggery. It signs settlement agreements and then  
5 reverts to the very same behavior which created the problem in the first place.  
6 If Bayview sincerely finds the allegations difficult to comprehend  
7 (doubtful!) then perhaps a mending of their ways would make life simpler for  
8 all and would not necessitate clogging the Court's calendar with business that  
9 adults should be able to handle privately and honorably.

10 Meanwhile, the Plaintiffs request that the Court deny the Defendant's  
11 12(b)(6) motion to dismiss and require that Bayview answer the verified  
12 Complaint.

13 Dated: 10-30-2015

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Gail Bennett-Wofford

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Dana Wofford

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19 Mark Bennett  
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**EXHIBIT 1**



**BAYVIEW**  
LOAN SERVICING

Bayview Loan Servicing, LLC  
4425 Ponce de Leon Blvd. 5th Floor  
Coral Gables, FL 33146

August 24, 2015

**Borrower:**

**Loan Number:** 200053352

MARK BENNETT, DARRELL R WOFFORD, KAREN K WOFFORD, DANA WOFFORD and GAIL WOFFORD  
10517 EAST ROAD  
WITTER SPRINGS, CA 95493

**Property Address:** 3345 LAKESHORE BOULEVARD  
LAKEPORT, CA 95453-0000

**RE:** Notice of acceptance of funds with full reservation of rights and remedies and continuing effectiveness of notice of default

Dear MARK BENNETT, DARRELL R WOFFORD, KAREN K WOFFORD, DANA WOFFORD and GAIL WOFFORD:

You recently sent a payment in the amount of \$3,297.53 for the referenced loan. This letter acknowledges receipt of your payment and in accordance with the terms of the legal documents, these funds have been applied pursuant to the loan documents. The funds will be applied to your loan at the Lender's discretion. So there is no misunderstanding, we emphasize this amount does not cure the default pursuant to the loan documents.

Our acceptance and/or application of these funds does not constitute a waiver of right of Bayview Loan Servicing, LLC to accelerate the loan and to foreclose on the property. We are still continuing with legal action at this time. Your loan remains delinquent.

With the exception of a full reinstatement at Lender's sole discretion, or payment in full of the outstanding obligation now due under the loan, all further payments received by Lender shall also be accepted with full reservation of Lender's rights and remedies and shall not constitute a cure of Borrower's existing loan default or defaults.

#### To reinstate your loan

To receive a statement setting forth the amounts necessary to reinstate the loan subject to Lender's discretion, please provide the undersigned with:

- A written request for such a statement
- An anticipated date of reinstatement

Sincerely,

*Paul Katen*

Paul Katen, Asset Manager  
Bayview Loan Servicing, LLC  
Phone Number: (800) 771-0225 Monday - Friday 9:00 a.m. - 6:00 p.m., ET  
Fax Number: (786) 470-3573

#### You Have Options

If you're experiencing economic hardship, we may be able to help. There are solutions available as alternatives to foreclosure. To discuss your situation and explore your options, call our dedicated trained staff at 1-800-771-0299, Monday - Friday 8:00 am to midnight ET; Saturday 8:00 am to 5:00 pm ET.

*See next page* →



Bayview Loan Servicing, LLC is a debt collector. This letter is an attempt to collect a debt and any information obtained will be used for that purpose. To the extent that your obligation has been discharged or is subject to an automatic stay of bankruptcy this notice is for compliance and informational purposes only and does not constitute a demand for payment or any attempt to collect such obligation.

The following mailing address must be used for all Error Notices & Information Requests: Bayview Loan Servicing, LLC, Customer Support, 4425 Ponce de Leon Boulevard, 5th Floor, Coral Gables, FL 33146.



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